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United States of America

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	
	:	
RAINBOW FOOD GROUP, INC.,	:	
and ROBERT KALKAN,	:	
	:	
Defendants.	:	

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, by and through its attorneys, Craig Carpenito, United States Attorney for the District of New Jersey, and Mark C. Orłowski, Assistant United States Attorney (appearing), files this Complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought by plaintiff, the United States of America, against defendants, Rainbow Food Group, Inc. ("Rainbow"), and Robert Kalkan ("Kalkan") (collectively, "Defendants"), seeking permanent injunctive relief for

violations of the Federal Meat Inspection Act ("FMIA"), 21 U.S.C. § 601 et seq. and the Poultry Products Inspection Act ("PPIA"), 21 U.S.C. § 451 et seq.

2. Defendants have violated the FMIA and PPIA by offering for sale within New Jersey, which is a designated state under the FMIA and PPIA, uninspected meat and poultry products for human consumption that were required to be inspected. Further, Defendants violated the PPIA by failing to maintain required records.

PARTIES

3. Plaintiff is the United States of America.

4. Defendant Rainbow Food Group, Inc. ("Rainbow") is an incorporated wholesale commissary located at 3 South Grey Rock Avenue, Little Falls, New Jersey 07424.

5. Defendant Robert Kalkan ("Kalkan") is the President of Rainbow.

6. Kalkan and his business partners have full operational control and knowledge of all of Rainbow's business transactions.

7. Defendants are and have been engaging in the sale of meat and poultry products within State of New Jersey.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to 21 U.S.C. §§ 467c and 674, and 28 U.S.C. §§ 1331, 1337, and 1345.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the District of New Jersey, and because Defendants transact business within this District.

REGULATORY SCHEME

10. Pursuant to 21 U.S.C. § 454(c)(1) and 9 C.F.R. § 381.221 (*see also* 40 Fed. Reg. 23453-54 (May 30, 1975)), New Jersey has been designated as a state to which the requirements of sections 1 through 4, 6 through 10, and 12 through 22 of the Poultry Products Inspection Act ("PPIA"), 21 U.S.C. § 451 et seq., apply to operations and transactions wholly within the state.

11. Pursuant to 21 U.S.C. § 661(c)(1) and 9 C.F.R. § 331.2, New Jersey has been designated as a state to which the provisions of subchapters I and IV of the Federal Meat Inspection Act ("FMIA"), 21 U.S.C. § 601 et seq., apply to operations and transactions wholly within the state.

12. As the FMIA and PPIA provide, meat, meat food products, poultry, and poultry products are an important source of the nation's total supply of food. It is essential in the public interest that the health and welfare of consumers be protected by assuring that these foods distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. *See* 21 U.S.C. § 451; 21 U.S.C. § 602.

13. The FMIA and PPIA prohibit any person, firm, or corporation from selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, or within a designated state, any meat or meat food product, FMIA, 21 U.S.C. § 610(c)(2) or poultry or poultry product, PPIA, 21 U.S.C. § 458(a)(2)(B), required to be inspected by the United States Department of Agriculture ("USDA"), unless they have been so inspected and passed inspection.

14. Additionally, the FMIA requires any persons, firms, or corporations that engage in the business of buying and selling (as meat broker, wholesalers or otherwise), transporting in commerce, or storing in or for commerce, or importing, any parts or products of carcasses of any cattle, sheep, swine, goats, horses, mules, or other equines, to keep such records that will fully and correctly disclose all transactions involved in their business. *See* 21 U.S.C. § 642(a)(meat products); *see also* 21 U.S.C. § 460(b)(similar provision in the PPIA for poultry products). The records must include information of each transaction including, among other things, the name and address of the buyer of the poultry or meat food products. *See also* 9 C.F.R. § 381.175(b)(1)(poultry); *see also* 9 C.F.R. § 320.1(b)(1)(meat).

FIRST CAUSE OF ACTION

Violations of the FMIA and PPIA – Uninspected Meat and Poultry Products

15. The allegations in paragraphs 1 to 14 are incorporated by reference as though fully set forth herein.

16. On or about October 1, 2018 and December 11, 2018, and on other dates, defendants violated the FMIA and PPIA by offering for sale or transportation in commerce meat, meat products, poultry or poultry products required to be inspected and under the FMIA and PPIA, without the products first passing federal inspection.

17. On or about October 1, 2018, Defendants prepared and sold within the designated State of New Jersey to North Jersey Friendship House, a wholesale customer, approximately 40 pounds of chicken empanadas that were required to be

inspected under the PPIA and were not so inspected and passed (the “October 1, 2018 violation”).

18. On or about December 11, 2018, Defendants prepared and offered for sale within the designated State of New Jersey to North Jersey Friendship House, a wholesale customer, approximately 84 pounds of chicken and beef empanadas that were required to be inspected under the PPIA and FMIA and were not so inspected and passed (the “December 11, 2018 empanada violation”).

19. On or about December 11, 2018, Defendants prepared and sold within the designated State of New Jersey to Nick’s Catering, a wholesale lunch truck customer, approximately 3 pounds of chicken salads that were required to be inspected under the PPIA and were not so inspected and passed (the “December 11, 2018 chicken salad violation”).

20. On or about December 11, 2018, Defendants prepared and sold within the designated State of New Jersey to TKMD Catering, a food truck operator, approximately 2 pounds of bacon and egg platters that were required to be inspected under the FMIA and were not so inspected and passed (the “December 11, 2018 bacon platter violation”).

21. Prior to the October and December, 2018, visits by USDA investigators, Defendants had received three Notices of Warning from the USDA regarding violations of the PPIA and FMIA and several visits from USDA investigators during which the investigators explained the requirements of the PPIA and FMIA.

22. Defendants received Notices of Warning dated April 17, 2017, December 4, 2017, and May 17, 2018, for violating the FMIA and PPIA by selling, transporting, or offering for sale or transportation, non-federally inspected meat, meat food products, poultry and poultry products for human consumption.

23. Defendants are familiar with the requirements of the FMIA and PPIA.

24. Additionally, on November 13, 2017, Kalkan stated to federal investigators that Rainbow does not operate under a Grant of Federal Inspection; acknowledged to federal investigators that Rainbow supplies uninspected meat and poultry products daily to approximately 60 lunch trucks who resell those products to the public; admitted that Rainbow has been engaged in that practice for approximately 2 years and agreed to discontinue preparing and selling food products that require USDA inspection until he received a grant of federal inspection.

25. Kalkan has also acknowledged repeated and knowing violations of the FMIA and PPIA in conjunction with Rainbow's business operations.

26. By issuing Notices of Warning, the USDA has extended to the Defendants numerous opportunities to voluntarily comply with the FMIA and PPIA in an effort to avoid utilizing the Court's resources.

27. Despite continued warnings and their acknowledgement of their repeated violations of the FMIA and PPIA, Defendants nevertheless continue to violate the FMIA and PPIA by selling, transporting, or offering for sale or transport, uninspected meat and poultry products.

28. The United States seeks the Court's assistance with enforcing the FMIA and PPIA against Defendants based on their knowing and repeated violations of the FMIA and PPIA.

29. The United States thus seeks to have Defendants enjoined, restrained, and prohibited from further violations of the FMIA and PPIA through injunctive relief to prevent Defendants' continued sale or transport, or offer for sale or transport, of uninspected meat and poultry products for human consumption with the State of New Jersey.

SECOND CAUSE OF ACTION
PPIA Recordkeeping Violation

30. The allegations in paragraphs 1 through 29 are re-alleged and incorporated by reference as though set forth fully herein.

31. On or about January 23, 2019, when USDA investigators were investigating the December 11, 2018 chicken salad violation, Rainbow was not able to provide the USDA Investigator records of the total number of chicken salads it prepared for its wholesale customers and to whom it sold the chicken salads and, therefore, violated the PPIA by failing to maintain records as required by 9 C.F.R. § 381.175(b) and 21 U.S.C. § 460(b).

32. Because Defendants have failed to keep proper records of the sale of poultry products, and in order to prevent Defendants from the repeated failure to maintain records relating to the sale of meat and/or poultry products the United States seeks the Court's intervention to enjoin, restrain, and prohibit Defendants from committing further violations of the PPIA.

PRAYER FOR RELIEF

WHEREFORE, plaintiff the United States of America requests that judgment be entered in its favor and against the Defendants, and seeks entry of an order granting the following relief, along with such further relief as the Court may deem just and proper:

(a) a permanent injunction requiring and compelling Defendants to comply in all pertinent particulars with the FMIA and PPIA, as well as the regulations promulgated thereunder;

(b) a permanent injunction enjoining and restraining Defendants and their employees, agents, representatives, successors, and assigns, and any and all persons in active concert or participation with any or all of them, from directly or indirectly selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, or within the designated State of New Jersey, any meat, or meat food product, poultry, or poultry product required to be inspected and passed by the USDA, unless such products are so inspected and passed by the USDA;

(c) a permanent injunction enjoining and restraining Defendants and their employees, agents, representatives, successors, and assigns, and any and all persons in active concert or participation with any or all of them, from directly or indirectly selling, transporting, offering for sale or transportation, or receiving for transportation, in commerce, or within the designated State of New Jersey, any poultry or poultry product required to be inspected, without preparing and maintaining the records required by the PPIA; and

(d) costs awarded to plaintiff the United States of America for bringing this action, including reasonable attorneys' fees, disbursements, and such further relief as the Court may deem just and proper.

Respectfully submitted,

CRAIG CARPENITO
United States Attorney

s/ Mark C. Orlowski
By: MARK C. ORLOWSKI
Assistant U.S. Attorney

Dated: April 17, 2020

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Assistant U.S. Attorney Mark C. Orłowski, U.S. Attorney's Office, District of New Jersey, 970 Broad Street, Suite 700, Newark, N.J. 07102 (973) 645-2760

DEFENDANTS

Rainbow Food Group, Inc.; Robert Kalkan

County of Residence of First Listed Defendant Passaic

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

John J. Veteri, Jr., Esq., 3 University Plaza, Suite 207, Hackensack, New Jersey 07601

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

21 U.S.C. section 451; 21 U.S.C. section 601

Brief description of cause:

Suit for permanent injunction to enforce Poultry Products Inspection Act and Federal Meat Inspection Act.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/17/2020

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE